

AMD17\_048 4/11/08

**Bell, Leanne S (DOT)**

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**From:** Scholl, James W (DOT)  
**Sent:** Friday, April 11, 2008 7:52 AM  
**To:** Bell, Leanne S (DOT)  
**Subject:** FW: STIP Amendment #17 comments  
**Attachments:** LCCSTIPAmendment.doc

Please log this in and the attachment as a comment, Thanks!

-----Original Message-----

From: Nancy Berland [mailto:lcc11@aptalaska.net]  
Sent: Thursday, April 10, 2008 6:07 PM  
To: DOT STIP; david.c.miller@fhwa.dot.gov; david.c.miller@dot.gov  
Cc: david.c.miller@fhwa.dot.gov; david.c.miller@dot.gov; Palin, Sarah H (GOV)  
Subject: STIP Amendment #17 comments

Please accept Lynn Canal Conservation's comments on the STIP Amendment.

Thank you.

Nancy Berland  
Conservation Director

**LYNN CANAL CONSERVATION, INC.**  
**BOX 964 • HAINES, ALASKA 99827**

April 10, 2008

Andy Hughes  
Regional Planning Chief  
ADOT, Southeast Region  
Box 112506  
Juneau, AK 99801-7999

Re: Lynn Canal Conservation comments on STIP Amendment #17

STIP Amendment #17 does not comply with state and federal requirements because DOT cannot support a reasonable expectation of full funding for the Juneau Access Project outlined on pages 19 and 20 of the *Southeast Region and Alaska Marine Highway System 2006 – 2009 STIP draft Amendment #17 Extract* document. According to changes mandated by SAFETEA-LU, DOT must “demonstrate that full funding will be available for projects included in the STIP.” This requirement can only be accomplished by vastly underestimating construction costs. Using an unrealistic cost estimate to “ensure” likelihood of full funding violates the spirit and intent of 23 USC 135 and 23 CFR 450.216(m). Therefore, we request that DOT revise STIP Amendment #17 by removing the Juneau Access Project from the STIP until such time as DOT can demonstrate full funding in the context of declining federal transportation dollars, uncertain state transportation funding, soaring nationwide construction costs, and a revised cost estimate after final design and completion of Phase II of the Zone 4 Geotechnical Report.

**Juneau Access Project construction costs are vastly underestimated**

**DOT’s rationale for low unit prices is not valid**

In the most recent cost estimate (*Juneau Access Improvements Financial Plan 2007 Annual Update*, October 2007 or “Cost Update”), DOT furnishes a justification for why unit prices would be “significantly lower” for a Juneau road “than usual Southeast Alaska prices.” (See Cost Update at page 42). DOT claims that low unit prices for a Juneau road will result because “large quantities will provide economies of scale that can result in unit prices significantly lower than usual Southeast Alaska unit prices.” (Id.). However, DOT does not plan on bidding out one large project to justify across the board “economies of scale” low unit prices, but rather will bid a series of much smaller projects. According to testimony given by Southeast DOT Director Malcolm Menzies to the Alaska State Legislature House Transportation Committee on February 12, 2008, “the first bid request will be for a 5 mile project [Juneau Lynn Canal Highway, Phase 1] and then, for a 15 mile project [Phase 2].” Because DOT has removed “economies of scale” by chopping the project into smaller pieces over a 12-year period, DOT can no longer claim significantly lower unit prices based on “economies of scale”. We request a realistic updated cost estimate that incorporates higher prices for each bid item, in recognition of the smaller scope of each construction phase.

Another rationale used by DOT for across the board low unit prices, and “perhaps the most significant factor is that there will be no public access or utility conflicts that usually slow down construction during the duration of the project. This will result in lower unit prices for almost every bid item on the project.” (See Cost Update at page 42). Having created a rationale for across the board low unit prices, DOT selected recent state projects upon which to base unit costs, while rejecting others. One state project that should not have been rejected is the Ketchikan 3<sup>rd</sup> Avenue Bypass because it is similar to the Juneau Access Project in two very significant ways: 1) there was no public access during construction, and 2) it was built across a very steep, unstable slope. DOT began, and then halted the project, needing to substantially re-design the road through the slide area. DOT’s initial estimate for the Ketchikan 3<sup>rd</sup> Avenue Bypass was around \$6 million. DOT underestimated this project by 400%. Instead of just one slide area on the Juneau Access Project, there are 112 rock, land and debris slides, and 36 active avalanche paths along 22 miles of proposed Lynn Canal road. (See *Lynn Canal Highway Phase I, Zone 4 Geotechnical Investigation*, or “Golder Report”). DOT’s approach to the Juneau project appears to be identical to the 3<sup>rd</sup> Avenue Bypass – start building and figure out the difficult terrain later – even if it involves a price tag that may be four times the most recent cost estimate, as in the case of the 3<sup>rd</sup> Avenue Bypass. In the current climate of declining federal transportation funding, costs that are four times or even double the \$374 million estimate have zero likelihood of full funding.

#### **The 2007 Cost Update belies current construction realities**

On October 29, 2007, DOT issued a press release stating that “construction costs nationwide have been **soaring** since 2004 and **Alaska sees even higher increases**” (emphasis added). DOT’s 2005 estimate for constructing a Katzeihin Ferry Terminal was \$15.7 million. After two years of “soaring” construction costs, the 2007 updated Katzeihin terminal estimate is \$16 million. (See Cost Update at pages 6 and 7). A maintenance building costing \$1 million in 2005 is still projected to cost \$1 million in the 2007 update (id.). While these two items, if appropriately priced to account for “soaring” construction costs, would not significantly increase overall project costs, they represent two easily identified examples that are indicative of an overall pattern of significantly underestimated costs.

#### **There are no contingency fees for reasonably anticipated items**

In its 2005 estimate, DOT budgeted \$11.5 million for highway contingencies. (See Cost Update at page 6). There are no highway contingencies in the 2007 Cost Update (id. at page 7), even though half the project (zone 4) is still in preliminary design stage. By contrast, DOT included approximately a very large contingency in its most recent Gravina project estimate. It would be reasonable and prudent to include a large contingency for the Juneau Access Project because DOT does not have a final road alignment for 22 miles of road. Expenses still not accounted for include possible tunnels and snow sheds (see Golder Report), reasonably foreseeable contingencies. DOT did not consider tunnels in the FEIS, and it rejected snow sheds outright because they were too expensive. (See Appendix Y at page 35). DOT instead believed it could use road closures during periods of avalanche danger. However, the Golder Report indicates that

avalanches (as well as debris, rock, and landslides) may be of sufficient volume to take out the road prism, making them essential, not discretionary as originally anticipated.

**With a reasonable cost estimate, the Juneau Access Project would rise to the level of “Major Project”**

Should the most recent cost estimate be vastly underestimated, as indicated above, the Juneau Access Project would rise above the \$500,000,000 threshold, requiring both a Project Management Plan and a Financial Plan. (See 23 USC 106(h).) Financial Plans require independent validation of cost estimates. (See FHWA Major Project Guidance at <http://www.fhwa.dot.gov/programadmin/mega/011907.cfm>; <http://www.fhwa.dot.gov/programadmin/mega/fplans.cfm> ). An independent cost estimate for this controversial project is essential due to skepticism over DOT’s figures.

**Full Funding cannot reasonably be anticipated**

DOT has yet to identify \$244 of the \$374 million, or two thirds of the estimated funds needed. (See Cost Update at page 11). Further, these funds “will be identified in future STIPS after 2009.” (Id.)

After the October 2007 cost update was released, Reuben Yost, the DOT planner in charge of the Juneau Access Project, admitted that DOT “doesn’t know how much the road will ultimately cost because the geotechnical information is incomplete.” (See November 11, 2007 Juneau Empire’s *Road cost unclear despite state’s latest figures*). DOT cancelled Phase II of the Zone 4 geotechnical study that would have determined the road alignment through this geologically challenging terrain, denying DOT the very information it needed to create a realistic cost estimate. Until DOT finishes the necessary geotechnical work, it cannot have a realistic cost estimate. Without a realistic cost estimate, there is no way DOT can reasonably “demonstrate that full funding will be available.” Therefore, until it does the required homework, it is unlawful for DOT to keep this project in the STIP. (See 23 USC 135(g)(4)(E); 23 CFR 450.216(m)).

**Use of 144(m) money is inappropriate**

23 USC 144(m)(1)(C) money is to be used for bridges that replace ferries. However, the bridges for the first two road segments will not replace “any ferry” because ferries will still be required to access Juneau, Haines, and Skagway. Funding bridges with 144(m) money that only serve to create a shorter ferry ride is not the same as funding a bridge to replace a ferry. It could be argued that DOT intends to use 144(m) money on bridges that would require two additional ferries; i.e., replace one ferry with three ferries. It appears as if DOT has circumvented the intent of the law by using 144(m) funds for this project.

**Federal Highway funding is declining**

DOT has acknowledged federal funding for transportation is in steep decline. (See, e.g., May 22, 2007 Letter from Commissioner von Scheben to Alaskans). The Highway Trust Fund, providing the largest federal source of road and transit money to the state, faces partial insolvency in 2009, and could permanently reduce federal outlays by 25%. (See December 19, 2006 Alaska Governor Sarah Palin, Transportation Transition Team Report at page 11. See also “Federal Funds Decline” in DOT’s *Crossroads Ahead – Why*

*a State Funded Transportation Program is Right for Alaska*, or “Crossroads Ahead” at page 12).

### **State funding is at best uncertain**

The STIP Amendment plans on using state funding, including \$45.3 million in Advance Construction Conversion (ACC) funds, \$18.5 million in “Other State Funds”, and \$253,000 in state matching funds for FY 08, and \$12.25 million in ACC funds for FY 09 for a total of \$76.3 million of state money. (Technically, the ACC funds would be paid back to the state provided federal funding is available to do so. However, there is no guarantee of this, particularly in light of partial insolvency of the federal highway trust fund.) The STIP amendment does not credibly demonstrate how DOT can insure it will get additional state money, or even keep the money already appropriated and not yet spent. There are three indications that this is already a serious problem for DOT. Firstly, DOT recognizes what it terms “Erratic State Appropriations to Transportation” (See Crossroads Ahead at page 23). Secondly, the legislature reduced the amount of money previously allocated for the road. (See 25<sup>th</sup> Leg., 1<sup>st</sup> Sess., HCS CSSB53(FIN), 20, reducing allocation for Juneau Access). Thirdly, on March 10, 2008, Representatives Thomas, Hawker, Edgmon, Wilson, Seaton, and LeDoux requested the House Finance Committee re-appropriate money left in the Juneau Access Road (Ch 82, SLA 06) to the Alaska Marine Highway Fund. (See March 10, 2008 letter to House Finance Co-Chairs Chenault and Meyer).

### **Adequate funding for Maintenance and Operations (m&o) has not been demonstrated**

23 CFR 450.104 requires demonstration of a reasonable assurance that federally funded transportation projects can be adequately maintained and operated. There is currently a substantial maintenance backlog for Alaska’s road system. (See Crossroads Ahead at page 15 showing m&o shortfall since 1983). If there is not sufficient money to keep the existing road system in good shape, the state should not be undertaking new projects of the magnitude of the Juneau Access Project. Further, m&o costs for a Juneau road were not adequately analyzed in the FEIS. (See LCC’s FEIS comments at page 14). The FEIS identifies only four slide areas and six potential slide areas. (See FEIS at page 4-46). The FEIS concludes that these areas involve “little soil movement.” (Id.) The Golder Report, however, identified 112 areas of rockfalls, debris flow, rock slides and unstable slopes that could substantially increase m&o costs. Many are major hazards with the potential to close the road for several days to weeks at a time and cause serious damage to the road. (See Golder Report at 26 defining hazard ratings, and at Table 6 listing 38 A-rated hazards and listing the size and frequency of events for all 112 hazards). DOT has never addressed additional m&o costs due to the likelihood of numerous year-round slides.

### **The Juneau Access project does not meet the merit and need requirements set out in 2030 Let’s Get Moving! (“2030”)**

2030 established eight merit and need categories as criteria against which to prioritize projects for dwindling transportation funds. The STIP amendment is allegedly

“structured to address the following policy objectives outlined in the Statewide Long-Range Transportation Policy Plan: *Let’s Get Moving 2030*”:

*“System Development: Develop the multimodal transportation system to provide safe, cost-effective, and energy-efficient accessibility and mobility for people and freight.”*

An east Lynn Canal road would replace a safe system, the Alaska Marine Highway, with one that is not safe. The Juneau Access FEIS admits a road would likely cause 6 fatalities in a 30-year period in addition to 450 non fatal accidents. (See FEIS at page 4-43). During the previous 30 years, there were no safety related fatalities or injuries on the marine highway (id.). The cost effectiveness of a road versus existing ferry service was also evaluated, where the road would cost the state \$122 million over 35 years, double the \$61 million to keep ferry service. (See April 2006 Record of Decision). In addition to being safe and cost-effective, the AMHS provides added mobility for people and freight. That is, substantial containerized freight is shipped via the AMHS and AMHS passengers travel from town to town without vehicles. This allows children, the elderly, the disabled, and those who do not own vehicles the opportunity to travel. These are all reasons why a majority of residents favor marine access over a road. (See FEIS at S-16). A fair evaluation of existing ferry service against the Juneau Access Project would show that the AMHS is far superior in meeting this policy objective.

*“System Preservation: Apply the best management practices to preserve the existing transportation system.”*

DOT has simply refused to apply best management practices to existing marine highway service, even though the public has repeatedly requested this. This issue was raised many times during the EIS process. LCC’s request for a Transportation System Management option that maximized the efficiency of the existing system with little or no new construction is just one example. (See LCC’s FEIS comments at pages 1 and 2, and LCC’s SDEIS comments at page 10)

*“System Maintenance and Operation: Ensure the efficient management and operation of the transportation system.”*

As stated above, DOT has refused to apply best management practices and has failed over the last 6 years to maintain and efficiently operate the AMHS. Building an east Lynn Canal road will not only not fix the ferry system, but also take away its second most lucrative run. (See McDowell Group Analysis of Traffic on Lynn Canal Ferry Routes, July 2003 at page 6 where Lynn Canal generates 10% of AMHS system-wide revenue).

*“Economic Development: Identify system development needs that address travel demand growth, economic development, and funding strategies. . . . Preserve and operate Alaska’s multimodal transportation system to provide efficient, reliable access to local, national, and international export markets.”*

The FEIS states the Juneau Access Project would not promote economic development as much as it would re-distribute funds from around the state to Juneau. (See FEIS at pages 4-24 and 25). Additionally, DOT has a proven track record of overestimating travel demand in the Lynn Canal corridor. (See LCC’s SDEIS comments at pages 5 and 6)

*“Safety: Increase the safety of the transportation system for users of all modes.”*

As previously stated, replacing existing ferry service with a road would dramatically decrease the safety of the transportation system.

*“Security: [P]rovide a secure transportation system and emergency preparedness.”*

The road is predicted to be closed for 34 days each winter due to avalanche danger, and we cannot know in advance when closures would occur. Additionally the Golder Report identified 112 other safety hazards, any one of which could close the road for many additional days. (See Golder Report at Table 6). There is simply no way a road with this many expected and unpredictable closures can either provide a secure transportation system or facilitate emergency preparedness.

Additionally, DOT intends to have an unmanned ferry terminal at the Katzehin. The existing plan outlined in the FEIS is for vehicles to drive onto ferries with no prior security screening. DOT has never addressed this security issue.

*“Environment and Quality of Life: Preserve the integrity of the ecosystems and the natural beauty of the state, limit the negative impacts and enhance the positive attributes – environmental, social, economic, and human health – of an efficient transportation system.”*

A road would be a permanent scar on one of the most scenic backdrops in the entire state. It would fragment habitat for the species identified in the FEIS, including a 26% habitat reduction for brown bear. A road would destroy 428 acres of terrestrial habitat and 70 acres of wetlands, impact 36.4 acres of essential fish habitat, and has the potential to impact 92 eagle nests. (See FEIS at page S-20). There are still unresolved issues regarding disrupting critical habitat for an endangered species. Habitat fragmentation, destruction of wetlands, old growth forests, and essential fish habitat will damage the integrity of the east Lynn Canal ecosystem. The best way to limit negative impacts is to remove the Juneau Access Project from the STIP.

*“Good Government”*

The “analytical framework” for this project has been deeply flawed since the draft supplemental environmental impact statement was issued. The “analytical framework” for this project is currently being contested in court.

## **Conclusion**

For all the reasons elaborated above, the STIP Amendment #17 should be modified by removing the Juneau Access Project.

Thank you for your serious consideration of these comments.

Sincerely,

Nancy Berland  
Conservation Director